IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1074 OF 2004

Smt. Devbai Sakharam Bhadale and Anr. ..Appellants

Versus

Shabir Akbarali Jammagarwala & ors. ..Respondents

Mr.R.A.Thorat for appellants

Ms.Gauri Godse for Respondents

CORAM : P.V.KAKADE, J.

DATE : 14th SEPTEMBER, 2004.

P.C.:

1. This is an appeal preferred by the unsuccessful defendants in both the Courts below, against the judgment and decree passed by the District Judge, Pune in Civil Appeal No.27 of 2003 dismissing the Appeal and confirming the Order passed by Joint Civil Judge, Junior Division, Pune in Regular Civil Suit No.820 of 1998 decreeing the suit by Order dated 18.12.2002.

2. I heard the learned counsel for both sides. Perused the entire record.

3. The appellant-defendant filed the suit for permanent injunction against the respondents in respect of the suit property bearing Plot No.2308, admeasuring 5 H. 90 R. alleging that the said property was purchased by Respondent Nos.1 to 6 by five separate sale deeds and they are in possession of the same, however, the appellant and respondent No.7 onwards have resisted the suit stating that the Respondent Nos.1 to 6 are not in possession of the suit property and the suit property is not sub-divided legally and therefore, the present respondent Nos.1 to 6 cannot claim separate possession of the suit property.

4. The lower Court adjudicated the dispute on merits and came to the conclusion that the plaintiffs have proved that they were lawful owner of the suit property on the basis of registered sale deed. It was further held that they were lawfully in possession of the suit land and therefore, they were entitled to perpetual injunction as the obstruction to their possession was

established and consequently the suit for perpetual injunction came to be decreed. The Lower Appellate Court Judge upheld the findings recorded by the Lower Court on the basis of available evidence on record.

. The appeal preferred against the said order in the District Court, Pune was adjudicated on merits by Ad-hoc Additional District Judge, Pune, who after hearing both the parties came to the conclusion that the order passed by the Lower Court was just, legal and proper and therefore, appeal came to be dismissed. Hence the present appeal.

5. At the outset it may be noted that the learned counsel for the appellant submitted that the suit was not maintainable because five different properties were purchased by five different sale deeds Exh.79 to 83, and therefore, there is misjoinder of cause of action and hence on that count alone the appeal deserves to be admitted because both the lower courts have concluded that the suit was maintainable in its present form. In this regard the perusal of the record shows that no doubt properties were purchased by five sale deeds, however, those are found adjoining to each other. The

maps annexed each of the sale deed shows that a complete defined area was purchased by the plaintiff. It is also not in dispute that the said five properties are one consolidated portion. The map drown by the TILR Exh.97 and map Exh.78 dawn by surveyor at the instance of Defendant No.1 clearly reflects that position. The Block No.2308/2 comprises of five lands purchased vide the said five sale deeds. The maps are also not challenged or disputed and they show that the five portions comprise of one whole area depicted in both maps Ex.78 and 97. The extract of Revenue Records also shows the demarcation of subdivision of block no.2308/2. The averments in the sale deed indicates that the possession of the suit property was handed over to the purchaser at the time of the execution itself. In these circumstances it was held that the plaintiff-purchaser was entitled to protect his possession on the basis of the available evidence on record. Therefore in my view there cannot be any substantial question of law involved in this regard.

6. On perusal of the record it is seen that several other issues are sought to be raised which are said to be substantial questions of law. However, I prefer to

disagree with this proposition. On perusal of the Judgment of both the courts below I am of the view that they have properly appreciated the factual as well as legal aspects of the evidence on record and therefore it would brook no interference by this Court.

. In the case of **KONDIBA DAGADU KADAM VS. SAVITRIBAI SOPAN GUJAR & ORS. AIR 1999 (3) SUPREME COURT 2213** the Apex Court has observed that the conditions mentioned in the Section 100 of the C.P.Code must be strictly fulfilled before a second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under section 100 of C.P.C. The substantial question of law has to be distinguished from a substantial question of fact. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court

in second appeal. Adopting any other approach is not permissible. In view of this position, I am of the view that the present appeal deserves to be dismissed and stands dismissed in limine. Consequently the civil application also stands dismissed.